IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16585 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAVRECHA RANGABEN MANAJI - Petitioner(s)

Versus

THAVRECHA JAVATIBEN BHIKHAJI & 1 - Respondent(s)

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Appearance :

MR DHAVAL M BAROT for Petitioner No(s).: 1.

None for Respondent No(s).: 1,2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 12/08/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The present is a writ application against the order dated 04.04.2005 passed by the learned Election Tribunal in Election Petition No.2 of 2002, rejecting the Election Petition of the petitioner.

2. The short facts leading to the present writ application are that the petitioner and respondent no.1 contested the elections to the Office of Sarpanch. Form No.27 in accordance with Rule 60(7) of the Gujarat Panchayats Election Rules, 1994 (hereinafter referred to as "the Rules" was filled and the petitioner was declared to have received 326 votes, while respondent no.1 could secure 317 votes and 47 votes were rejected. Immediately thereafter, an application for re-counting of votes was made by respondent no.1 which was allowed by the Election Officer/ Returning Officer and he ordered re-counting of votes. After re-counting, it was found that respondent no.1 could secure 330 votes. As the result was changed after re-counting, respondent no.1 was declared elected. The petitioner being aggrieved by re-count and amendment in the result filed an Election Petition in accordance with law. During pendency of the Election Petition an application seeking an interim order was made, the application was allowed and the learned Election Tribunal ordered re-counting of votes. The said order was challenged by respondent no.1 before this Court in Special Civil application No.1279 of 2003. The writ application was heard and decided by a Division Bench of this Court and by their order dated 05.03.2003 they allowed the writ application and quashed the

interim order, the parties were allowed to lead evidence. After hearing the parties the learned Election Tribunal observed that the petitioner's submission that the application for re-counting was made after the petitioner had left the office was incorrect. It recorded a finding that the petitioner was very much present at the time of re-counting. The Tribunal also observed that the rejected votes were required to be recounted. It also observed that the petitioner's submission that Form No.27 which was filled in accordance with Sub-rule 7 of Rule 60 of the Rules, though was not amended and a new form was filled, but that was not an illegality going to the root of the case, but was a simple irregularity. It accordingly rejected the Election Petition. Being aggrieved by the said judgement the petitioner is before this Court.

3. Learned counsel for the appellant has raised various submissions which we shall consider one by one.

4. It was submitted that the application for re-count was filed after the petitioner had left and the re-count was done in her absence From the letter dated 26.12.2001 sent by the Election Officer/ Returning Officer to the present petitioner it would clearly appear that after the form was filled, respondent no.1 had made an oral objection that she was to make an application for re-count of votes. The letter further says that before she could make an application the petitioner left the premises, but immediately after the application for re-count was filed, the name of the present petitioner was announced on microphone and she was required to

appear and attend the proceedings of re-counting. Even on 26.12.2001, the Returning Officer recorded that on the fourth call the petitioner came to the office and in her presence the rejected votes were re-counted. The learned Election Tribunal has also recorded a finding of fact that the re-count was undertaken in the presence of the present petitioner. If that be so, the submission made by the learned counsel for the petitioner is misconceived.

5. It was next submitted that the petitioner's application for re-count was unceremoniously rejected and that action on the part of the Election Officer was bad. In our considered opinion after the first re-count when the results were declared the application filed by the petitioner was not maintainable. If the petitioner wanted a re-count of few votes or all the votes, then before re-count started, at the instance of respondent no.1, the petitioner could make an application for re-count of all the votes. It appears that after missing the first opportunity, the petitioner wanted to create a ground in her favour.

6. It was then submitted that after Form No.27 is filed in an application for re-count is not maintainable. It was also submitted that assuming that the application was valid and justified, then the Returning Officer was required to correct From No.27 which was already filled and he could not fill a fresh form.

7. In our considered opinion the first argument regarding maintainability of application for re-count is misconceived. A fair perusal and understanding of

Sub-rule 7 of Rule 60 and sub-rule 1 of Rule 61 would make clear that an application for re-count may be filed only after Form No.27 is filled and, it would be impossible for any party to make an application for re-count unless results are declared by the competent authority. So far as filling of a fresh form is concerned, in our opinion the learned Election Tribunal was not wrong in holding that the same was a minor irregularity. We repeatedly asked learned counsel for the petitioner that if a new form was filled, then what prejudice occasioned to him. Learned counsel for the petitioner but for saying that this was an illegality which is going to the roots, did not say anything further. Assuming the form already filled was not amended, but a fresh form was filled and this was bad on the part of the Election Officer, then too the petitioner would be required to show to us that how the Election results would stand affected because of filing of the fresh form. In absence of any prejudice to the petitioner it may not be possible for us to interfere in the matter.

8. The learned court below in our opinion was not unjustified in dismissing the Election Petition. The Special Civil Application is dismissed. No costs.

(R.S. GARG, J.)

(RAVI R. TRIPATHI, J.)

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